

# Workers' Compensation Study Project

Prompted by the 2004 Oregon Worker's Compensation Premium Rate Ranking study that showed Montana's premium rates to be among the highest in the country, Governor Brian Schweitzer asked Lieutenant Governor John Bohlinger in February 2006 to lead an examination into the true costs and benefits of Montana's workers' compensation system. To take the study from idea to reality, Lieutenant Governor Bohlinger turned to Labor Commissioner Keith Kelly and Employee Relations Division Administrator Jerry Keck. Mr. Keck organized a project team that was able to define the project's purpose and scope within a project management methodology.

The study was divided into two separate phases: Phase I, which ran through 2006, focused on research, information gathering, and issue analysis. Phase II began in mid-December 2006 with the launch of the Labor-Management Advisory Council on Workers' Compensation, and will continue through the 2009 session of the Montana Legislature.

## Phase I

The purpose stated in the Project Charter for Phase I of the Workers' Compensation Study project was to "define and conduct a study of the Montana workers' compensation system—premiums, benefits, costs and other factors—as compared to selected other states. The study will determine and establish accurate means of comparison across other state systems and report the results in an objective manner."

The study set out to:

- Identify specific and well-defined metrics and sources of workers' compensation data
- Solicit support for the study by engaging the input of stakeholders and interested parties, such as insurers, medical providers, injured workers, and legislators
- Provide Montana workers' compensation policy makers with baseline information on the current status of the Montana system, as compared empirically and accurately with other states. The following states were selected for comparison purposes:

Contiguous states: Idaho, North Dakota, South Dakota, Wyoming

Regional states: Colorado, Oregon, Utah, Washington

States with similar benefit structures: Arkansas, Hawaii, Kansas, Kentucky, Tennessee

- Determine primary cost drivers in the Montana workers' compensation system

Over the course of the year, seven status meetings were chaired by Lt. Governor Bohlinger to report on project progress. Presentations and topics discussed in status meetings included:

- Workers' Compensation Policy Review template for Comparing States' Workers' Compensation Benefits and Costs
- Treatment Guidelines: Rules and Instructions to Consider
- A Basic Understanding of Cost Drivers
- Comparison of Workers' Compensation Fee Schedule to Blue Cross Blue Shield and Medicare
- Results of a survey of the study states on workers' compensation medical costs
- Workers' Compensation Research Institute (WCRI) Illinois Comparison of State Medical Fee Schedules over Medicare
- National Council on Compensation Insurance (NCCI) Overview of the Montana Workers'

#### Compensation System

- Oregon Worker's Compensation Premium Rate Ranking – An In-depth Look
- Economic Metrics
- Injury Prevention I - The Impact of Drug Use on Workplace Safety
- Montana Workers' Compensation Loss Study
- Return to Work

In addition to these studies, the ERD contracted with outside organizations and experts in these areas:

- The Workers' Compensation Research Institute (WCRI) conducted an administrative inventory using the same methodology employed for over 30 other states. The publication, "Workers' Compensation in Montana: Administrative Inventory" can be obtained from the DLI or purchased from the WCRI by visiting their web site at [www.wcrinet.org](http://www.wcrinet.org).
- Ingenix, a Minneapolis-area firm specializing in medical data, did a preliminary analysis for a new non-facilities medical fee schedule.
- Dr. John Burton, Professor Emeritus of Rutgers University and former Chair of the 1972 National Commission on State Workers' Compensation Laws, routinely reviewed and advised the project team on selected issues or topics.

The Phase I Study identified four primary cost drivers that needed further investigation and analysis:

1. Frequency of Injuries - Montana has both a higher total claim frequency than neighboring study states and a larger proportion of claims that involve indemnity benefits. Montana's injury rate is approximately 57% higher than the national average. Our injury rates directly impact our workers' compensation rates.
2. Higher Medical Costs per Case - Montana's average incurred medical cost per claim is higher than all the study states, except Kentucky. Montana sets maximum medical fees much higher than the country's median for surgery and radiology. Overall, Montana's maximum medical fees are approximately 67% higher than Medicare's compared to the median at nearly 55% higher than Medicare.
3. Return to Work Duration - The median time in Montana until a worker injured in Calendar Year 2000 (CY00) returned to work was 79.8 days. The National Council on Compensation Insurance (NCCI) data indicated the accident year 1999-2002 average number of days to return to work in Montana was 136 days compared to the countrywide average of 85 days. Workers injured in CY00 lost an estimated 40.5% of the wages they would have earned if they had not been injured. Increased lost time durations significantly increase the amount of wages an injured worker loses and increase the total costs of benefits.
4. Settlement and Closure of Claims - Montana claims remain open longer than other states studied by the WCRI. Ten to 11% of indemnity claims are settled in Montana and medical benefits are closed in about 3% of settlements. The WCRI's CompScope (2002/2005) data (10 states) show a median of 38% claims settled, most with closed medical benefits. Increased duration of medical claims increases incurred costs.

## Phase II

Phase II of the Workers' Compensation Study project formally began when the Labor-Management Advisory Council (LMAC) on Workers' Compensation was formed in December 2006 through executive order by Commissioner Keith Kelly. The LMAC was formed based upon a model successfully employed by several other states. Other states have experienced significant success in modifying their workers' compensation systems by using similar advisory councils to suggest changes to improve their workers' compensation systems. The purpose of the LMAC is to provide a structure for an organized discussion of workers' compensation public policy, using data and reports collected in Phase I as well as additional data and reports requested by the LMAC. The primary outcome of the LMAC will be recommendations to the Commissioner of the DLI for proposed legislation for the 2009 Montana Legislature.

The LMAC consists of five representatives of employees and five representatives of management, with Lt. Governor John Bohlinger serving as chair and ERD Administrator Jerry Keck serving as a non-voting member.

Members are:

### Representing workers

**Doug Buman**

Laborers' Int'l Union of N. America  
Seattle, WA 98168

**Don Judge**

Injured Workers Resource Council  
Helena, MT 59601

**Jason Miller**

AFL-CIO  
Helena, MT 59601

**Jacquie Helt**

UNITE HERE! Local 427  
Missoula, MT 59802

**Dan Lee**

AFL-CIO  
Missoula, MT 59808

### Representing employers

**Bill Dahlgren**

Sun Mountain Sports  
Missoula, MT 59802

**Riley Johnson**

National Federation of Independent Business  
Helena, MT 59601

**Bob Worthington**

Montana Municipal Insurance Authority  
Helena, MT 59604-6669

**Annette Hoffman**

St. Vincent's Healthcare  
Billings, MT 59101

**Connie Welsh**

State of Montana  
Helena, MT 59620-0127

The work plan for Phase II focuses the work of the LMAC in the four primary areas identified in Phase I and other topics identified by the council:

1. Safety Policy review - Address the high frequency of claims in Montana.
2. Medical topics review - Review prescription drug fee schedule, non-facilities fee schedule, facilities fee schedule, and utilization and treatment guidelines.
3. Return-to-Work topics review - Identify ways to reduce the duration of time off work by returning injured workers to employment.
4. Settlements and Closure of Claims Review- Provide fair and reasonable ways for parties to agree upon settlements that close claims, reducing the long tail, unpredictable effect on costs.
5. Review of other requested topics - These include exemptions to the workers' compensation system and licensing of claims examiners or alternatives to licensing.

Please visit our web site at <http://erd.dli.mt.gov> for detailed information about the data collected and the LMAC meetings.